IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14738 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TEJABHAI RAMJIBHAI DESAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14738 of 2004
MR DP JOSHI for Petitioner No. 1-3
MR JITENDRA MALKAN for Petitioner No. 4-5
..... for Respondent No. 1-7

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 20/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. This is a joint petition filed by five petitioners in the nature of Public Interest Litigation as stated at the bar by learned counsel Shri Joshi for the petitioners. As it was in the nature of Public Interest Litigation, therefore, initially it was placed before the Hon'ble First Court taking up such matters. But after hearing the learned counsel Shri Joshi for the petitioners, the Hon'ble First Court has ordered to place it before the appropriate Bench in view of the challenge to Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (`the Act' for short) being ultra vires to the provisions of the Constitution. Therefore, this matter is placed before this Court.

#. As many as 15 prayers have been made by the petitioners in this petition in para 7 of this petition which are as under :

"(A) The Hon'ble Court may secure observance of the constitutional benefits and privileges conferred upon the deprived section of society namely Maldharis and social justice may reach to them by providing them gaucher land as per Resolution dated 5.10.1953 and considering all Maldharis of State of Gujarat, equal to maldharis of erstwhile State of Saurashtra.

(B) That the writ of Mandamus or any other appropriate writ, order or direction be issued and the Resolution dated 30.12.1988 may be strictly implemented.

(C) That the writ of Mandamus or any other appropriate, order or direction be issued and the gaucher land may be restored for the purpose of gaucher and the vesting of land be used for cattles only.

(D) That, the restriction imposed by Section 63 of The Bombay Tenancy & Agricultural Lands Act, 1948 may please be struck down and may be declared as ultra vires to the constitution.

(E) That the right to live with dignity and to carry on the activity of cattle breeding and allied cattle pursuits may be allowed to carry on.

(F) That the Maldharis may be allowed to purchase land for the purpose of cattle grazing and cattle breeding and the unreasonable restrictions imposed by Section 63 of the Tenancy Act may be struck down.

(G) That the Maldharis of the State of Gujarat be considered as agriculturists / farmers for all purposes in all related land laws prevailing in the State of Gujarat.

(H) That the gaucher land be allowed to remain gaucher for all purposes and no alteration be made looking to the interest of Maldhari community as the `Kabrastan' remains `Kabrastan' for all time.

(I) The cattle breeding and cattle related industries are allowed to be continued in State of Gujarat by the Maldharis of State of Gujarat.

(J) The Dairy farming and dairy products be allowed to be continued by the Maldharis and no ban be imposed whereby the monopoly be created in favour of any Institute / Industry.

(K) The affected Maldharis may be resettled and rehabilitation Scheme be evolved on the line of resolution dated 5.10.1953, Revenue Department of Saurashtra State.

(L) That the Resolution dated 2.9.2003 of Urban Development and Urban Housing Department be quashed and set aside.

(M) During pendency and final hearing of this petition, the Resolution dated 2.9.2003 of Urban development and Urban Housing Department be stayed.

(N) The Survey Settlement as per Section Chapter 8-A and details thereof be placed before the Hon'ble since inception of Bombay State.

(O) That the order made by Revenue Minister dated 23.5.03 may be quashed and set aside and the Maldharis may be allowed to purchase the land.

(P) ...."

#. Main crux of the arguments of Mr.Joshi for the petitioners was that due to restrictions imposed under Section 63 of the Act, the petitioners and Maldharis are made to suffer. Such restrictions imposed under Section 63 of the Act are ultra vires to the Constitution, therefore, the same may be struck down.

#. Before dealing with this argument of Mr.Joshi, we would like to reproduce Section 63 of the Act which is as under :

"Section 63 :
"Transfers to non-agriculturists barred - (1)
Save as provided in this Act -

(a) no sale (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee [or]

[(c) no agreement made by an instrument in writing for the sale, gift, exchange, lease or mortgage of any land or interest therein,]

shall be valid in favour of a person who is not an agriculturist [or who being an agriculturist cultivates personally land not less than the ceiling area whether as an owner or tenant or party as owner and partly tenant or who is not an agricultural [labour]:

Provided that the Collector or an officer authorized by the [State] Government in this behalf may grant permission for such sale, gift, exchange, leave or mortgage [or for such agreement] on such conditions as may be prescribed :

[Provided further that no such permission shall be granted, where land is being sold to a person who is not an agriculturist for agricultural purpose, if the annual income of such person from other sources exceed five thousand rupees.]

(2) Nothing in this section shall be deemed to [prohibit the sale, gift, exchange or lease, or

the agreement for the sale, gift, exchange or [lease of] a dwelling house or the site thereof or any land appurtenant to it in favour of an agricultural labourers or an artisan [or a person carrying on any allied pursuit].

[(3) Nothing in this section shall apply or be deemed to have applied to a mortgage of any land or interest therein effected in favour of a cooperative society as security for the loan advanced by such society [or any transfer declared to be mortgage by a court under Section 24 of the Bombay Agricultural Debtors' Relief Act, 1947]].

[(4) Nothing in section 63A shall apply to any sale made under sub-section (1)]"

#. Relying on the Constitutional Bench of the Hon'ble Supreme Court in the case of Pathumma and others V/s State of Kerala and others, reported in AIR 1978 SC 771, Mr.Joshi submitted that restrictions put in Section 63 of the Act are against the interest of Maldharis of the State. They are not only excessive in nature but also going against the interest of Maldharis, therefore, the same should be struck down.

In case of Pathumma (supra), there was a challenge to the vires of the Kerala Agriculturists Debt Relief Act, 1970 and the appellants before the Hon'ble Supreme Court have challenged, more particularly, Section 20 of the said Act which entitled the debtors to recover the property sold to the purchaser in execution of the decree passed in liquidating the debt owed by the agriculturists. Section 20 of the Act was assailed before the Hon'ble Kerala High court on three grounds :

"(1) That the Act was beyond the legislative competence of the State Legislature and did not fall within Entry 30 of the State List.

(2) That the provisions of S.20 and the sub-sections thereof were violative of Art.19(1)(f) of the Constitution of India inasmuch as they sought to deprive the appellants of their right to hold property.

(3) That sub-secs.(3) and (6) of S.20 of the Act were violative of Art.14 of the Constitution of India inasmuch as the stranger decree holder was selected for hostile discrimination whereas a

bona fide alienee who stood on the same footing as the stranger decree-holder was expected from the operation of the Act."

Upholding the validity of the Act and the judgment of the Kerala High Court, Honourable Supreme Court laid down the guidelines to determine the question of reasonableness of "restriction".

"(1) that, in judging the reasonableness of the restrictions imposed by clause (5) of Article 19, the Court has to bear in mind the Directive Principles of State Policy.

(2) that restrictions must not be arbitrary or of an excessive nature as as to go beyond the requirement of the interest of the general public.

(3) that in order to judge the quality of the reasonableness no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case.

(4) that a just balance has to be struck between the restriction imposed and the social control envisaged by clause (6) of Article 19.

(5) that there must be a direct and proximate nexus or a reasonable connection between the restriction imposed and the object which is sought to be achieved. In other words, the Court has to see whether by virtue of the restriction imposed on the right of the citizen the object of the statute is really fulfilled or frustrated.

(6) that court must see the prevailing social values whose needs are satisfied by restrictions meant to protect social welfare.

(7) that so far as the nature of reasonableness is concerned it has to be viewed not only from the point of view of the citizen but the problem before legislature and the object which is sought to be achieved by the statute. In other words, the Courts must see whether the social control envisaged in clause (6) of Article 19 is being effectuated by the restrictions imposed on the fundamental right."

It was held by the Hon'ble Supreme Court that the object of the Act was to eradicate rural indebtedness and thereby to secure common good of people living in abject poverty. The object, therefore, clearly fulfils the directive laid down in Articles 38 and 39(b) of the Constitution. The Hon'ble Supreme Court further held that :

"The object of the Act is to protect the poor distressed agriculturist debtors from the clutches of greedy creditors who have grabbed the properties of the debtors and deprived the debtors of their main source of sustenance. Another object which is said to be fulfilled by the statute is to eradicate and remove agricultural indebtedness in the State by amelioration and improvement of the lot of debtors by bringing them to the subsistence level and reducing their borrowings. The Act does not provide for any drastic or arbitrary procedure as the property is restored to the debtor only on payment of the purchase money. Having regard to the economic conditions prevailing in Kerala before the passing of Act, it cannot be said that the restrictions are in any way arbitrary or excessive or beyond the requirements of the situation."

#. Now, in view of the judgment of the Hon'ble Supreme court in Pathumma's case, we will consider the provisions of Section 63 of the Act which we have already reproduced earlier. Bare reading of Section 63 of the Act shows that there is a reasonable restriction put in Section 63 of the Act and transfers of the land either by way of sale or mortgage or by any means to non-agriculturists is prohibited. Subject to proviso which states that the Collector or any Officer authorised by the State in this behalf may grant permission for sale, gift, exchange, lease or mortgage of such land on such conditions which may be prescribed by him but second proviso clearly makes it clear that no such permission can be granted where the land is to be sold to a person who is not an agriculturist for agricultural purpose if the annual income of such person from other sources exceed Rs.5,000/-. Thus, it is in the larger interest of the agriculturists that such restrictions are put under Section 63 of the Act.

The submission of Mr.Joshi for the petitioners was that by not including the petitioners or Maldharis in the definition of farmers or agriculturists, they have

been deprived from the benefit of using gauchar land. This submission of Mr.Joshi is not well founded. Merely because, there is no clarification is made for the Maldharis under Section 63 of the Act, it does not become ultra vires to the Constitution. For use of the gauchar land, if there is no provision under any Act, then they have to approach the appropriate government, but on this ground it cannot be held that provisions of Section 63-A are ultra vires. Once challenge to section 63 of the Act fails, then the petition is required to be dismissed qua that relief. Several reliefs have been prayed in this petition, for that appropriate petition/s have to be filed.

#. With these observations, this petition is summarily dismissed.

(B.J.SHETHNA, J)

(SHARAD D DAVE, J)

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